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Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Request for Emergency Action and Relief (WC Docket 12-375)

Worth Rises submits this emergency request for action to provide rate relief for incarcerated people and their families.

In the midst of the current unprecedented global health crisis, correctional telecommunications corporations (known to the FCC as “inmate calling service” providers) have continued to exploit incarcerated people and their families. In light of this emergency, the Commission should do everything in its power to make all prison and jail phone calls free for the duration of the COVID-19 outbreak. The Commission should first urge correctional telecommunications carriers to sign and honor Chairman Pai’s Keep Americans Connected Pledge (the “Pledge”) by making calls free for families of incarcerated people. At the same time, the Commission should protect incarcerated people and their families by using its authority to regulate phone rates to make calls free for at least the next 60 days, in the event that these corporations do not respond in a timely manner, given the urgency of the issue. If the Commission does not make calls free, then it should require that corporations provide voice call service at cost and require them to submit public, biweekly reports about their revenue and costs of service to allow public monitoring of compliance.

I. The Commission should urge correctional telecommunications corporations to sign and honor the Keep Americans Connected Pledge by making all calls free in prisons and jails during the COVID-19 national emergency.

On March 13, 2020 the Commission announced the Pledge, which asks telecommunications companies to commit to: not terminating service due to a customer’s inability to pay, waiving late fees, and opening up Wi-Fi hotspots to all customers.ⁱ Hundreds of telecom providers quickly signed the Pledge, offering relief to countless struggling customers.ⁱⁱ Notably absent, however, are any of the correctional providers. While corporations like AT&T have offered free or reduced-price service to customers, Securus and GTL have continued to demand exorbitant rates from theirs.

However, importantly, the Pledge, as written, will not actually create relief for Americans subjected to the correctional telecom industry. Calls in the correctional context must generally either be prepaid or paid for at the time of service. There are no open lines of communication maintained by monthly plans, thus there are no bills to suspend or late fees to waive. Instead, many families will simply never be connected to their incarcerated loved ones in the first place.

This is an urgent and hugely consequential matter, as in-person visits to jails and prisons have been prohibited in order to minimize the transfer of COVID-19 to incarcerated populations. As has been established in the Commission's own orders, connections to the outside world are critical for incarcerated people and have a significant impact on the community, especially the children of incarcerated people.

Therefore, the Commission should urge correctional telecom corporations to adopt a modified version of the Pledge:

Given the coronavirus pandemic and its impact on American society, [Company Name] pledges for the next 60 days to:

- (1) Provide free phone and video calls to any person who cannot afford them due to disruptions caused by the coronavirus pandemic;*
- (2) Open up email services to any American who needs them.*

II. If corporations are unwilling to sign the Pledge in a timely manner, then the Commission should stop the correctional telecom industry from price-gouging incarcerated people and their families by making calls free during the COVID-19 crisis.

The Commission has sweeping power to respond to national emergencies on top of its power to regulate the correctional telecom industry. The cost of communication for incarcerated people and their families is itself a national emergency in light of the prohibition on in-person visits and the disastrous economic downturn. Incarcerated people and their families, on average, were among the poorest of our society before the coronavirus. The Commission should protect incarcerated people and their families by making all calls free for the duration of the COVID-19 pandemic.

- i. The Commission has sweeping authority to further regulate the correctional telecom industry in emergencies.*

In the Communications Act of 1934, Congress empowered the Commission to regulate the telecom industry to ensure that the cost of communication is “just and reasonable” and to protect “the public interest.”ⁱⁱⁱ Congress also recognized the unique importance of regulating the correctional telecom industry when it gave the Commission authority over “inmate telephone service in correctional institutions, and any ancillary services” in the 1996 Communications Act.^{iv}

While these grants of authority give the Commission significant authority over the correctional telecom industry, the Commission has even broader authority to act during national emergencies. The organic statute for the Commission directs the agency to issue regulations to support the “national defense” and “the safety of life and property.”^v Using these powers, the Commission has played a key role in protecting the nation's access to communication during wars and natural disasters.^{vi}

The Commission also has the tools to exercise this authority quickly to respond to emergencies. The FCC may grant a waiver for good cause shown.^{vii} A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.^{viii} In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.^{ix} Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.^x

In fact, the Commission has already exercised its authority to protect consumers during the current COVID-19 crisis. In the last few weeks alone, the Commission has issued at least six waivers, in addition to dozens of other emergency actions, such as temporary grants of spectrum access.^{xi} In granting these waivers, Chairman Pai repeatedly noted that “[t]hese extraordinary circumstances present unique challenges” justifying urgent action by the Commission.^{xii}

The Commission does not just have the authority to waive rules, but it may also issue rules in emergencies, as it has done in the past when lives were at stake. The Administrative Procedures Act (APA) gives the Commission the power to issue emergency rulemakings and bypass procedural requirements if good cause exists.^{xiii} For instance, the Commission used this power to authorize \$211 million in relief in the aftermath of Hurricane Katrina to protect the Red Cross’ access to communication networks.^{xiv}

Additionally, in recent weeks, the President has issued Executive Orders expanding executive power to fight the spread of coronavirus. In a March 23, 2020 order, the President directed executive agencies to take strong action to prevent price gouging to combat the coronavirus, noting that he will “not tolerate” corporations that seek to take advantage of the crisis for financial gain.^{xv}

The Communications Act of 1934, as amended in 1996, the FCC rules, the Administrative Procedures Act, and the President’s Executive Orders all clearly establish the Commission’s important role in responding to the COVID-19 pandemic and provide necessary the authority and mechanisms to protect incarcerated people and their families in this emergency.

ii. The cost of communication for incarcerated people and their families is a national emergency.

As the Commission has recognized, communication is now more important than, ever as millions of Americans are being required to shelter-at-home to stop the spread of COVID-19. Communication is equally as important, if not more, for the millions of Americans in our nation’s prisons and jails and their families. However, frustrating the Commission’s goal of keeping Americans connected, correctional telecom corporations are exploiting this moment and desperate families for financial gain. COVID-19 has turned the longstanding issue of the high cost of prison and jail communication into a national emergency, separating families, isolating people, and putting additional lives at risk.

Even without a pandemic, one in three families with an incarcerated loved one goes into debt trying to stay in touch, and 87% of those responsible for these costs are women, largely women

of color.^{xvi} Yet, as the Commission has recognized, the costs families bear have no relation to the actual cost of service.^{xvii} In many cases, an overwhelming percentage of the cost of a call goes towards “site commissions,” which are kickbacks that correctional telecom corporations include in contracts to curry favor with correctional agencies.^{xviii} These corporations then layer on significant profit margins for themselves. As a result, the cost of a call can vary widely from agency to agency. For instance, Securus charges less than a cent per minute for a call in one Dallas jail while charging more than a dollar per minute at an Arkansas jail just a few hours away.^{xix}

Their ongoing price gouging practices have hardly changed in response to the COVID-19 pandemic. Aside from offering a few token gestures, like one or two free calls per week, correctional telecom corporations have continued to prey upon incarcerated people and their families through this crisis. In a recent filing to the Commission, Securus boasted about providing 12.8 million free call minutes in two weeks,^{xx} but that is equivalent to just 10.7 minutes per person across the 1.2 million incarcerated people forced to use the Securus service. At a time when communication is most needed, correctional telecom corporations are forcing people to ration a few minutes of free call time, as they continue to charge as much as \$25 for a regular 15-minute call.^{xxi} And families facing the incarceration of a loved one—who are already disproportionately economically distressed—are having an even harder time than normal keeping up. Like millions of others, these families are struggling with job loss, reduced pay, unplanned eldercare and childcare, and, in the worst cases, their own healthcare.

While correctional telecom corporations continue to make millions, incarcerated people and their families are paying with their health and well-being—even their lives. Nearly every prison and jail in the country has ended in-person visits, leaving phone and video calls as the only meaningful way for people to stay in touch with their families. But, because of the cost of calls, many families are forced to go without, leaving incarcerated people isolated and unable to check in on the wellbeing of their families, and vice versa. Without communication, people will be driven to despair and anxiety, which both weakens immune systems and increases susceptibility to infection. As a result, the cost of communication will have a very real impact on the spread of COVID-19 in correctional facilities and the public. Moreover, lack of communication disrupts the real connections needed for successful reentry into society, resulting in an even greater price paid by all communities.

- iii. *The Commission should use its emergency waiver and rulemaking powers to require calls be free for incarcerated people and their families for the duration of the COVID-19 crisis.*

The spread of COVID-19 is an unprecedented global catastrophe that requires an urgent response from the Commission. This action is in line with recent actions taken by the Commission and other executive agencies in response to COVID-19. The Commission has good cause to waive the rate caps and instead, using emergency rulemaking authority under the APA, impose temporary rates of \$0.00 per minute for calls from and to incarcerated people during the COVID-19 national emergency.

As previously discussed, the Commission may waive any of its rules if “good cause” is shown. The Administrative Procedures Act (APA) gives the Commission the additional authority to issue emergency rulemakings and bypass procedural requirements if “good cause” exists.^{xxii} Good cause exists to waive a rule if there are “special circumstances” and a waiver would serve the public interest more than strict adherence to the rule.^{xxiii} The Commission can look to “considerations of hardship, equity, or more effective implementation of overall policy” to guide its decision.^{xxiv}

The COVID-19 global pandemic that has thrust the world into unprecedented times of health and economic insecurity goes far beyond the “special circumstances” required by statute to establish good cause for the Commission to act. This good cause is reinforced by the rare facts that nearly all facilities nationwide have suspended visits and many correctional agencies, including the Federal Bureau of Prisons, have put their entire systems on lockdown. Most importantly, the Commission should consider the human cost of allowing corporations to continue charging unregulated exorbitant amounts for basic human communication. These considerations do not just authorize action by the Commission—they demand it.

To that end, the Commission should use its emergency rulemaking authority to propose a rule that states: *(1) phone calls and video calls must be provided to incarcerated people and their families at no cost for 60 days or the duration of the national emergency, whichever is longer; (2) any correctional telecom ancillary fees must be waived for the same period; (3) correctional telecom corporations must work with correctional agencies to lower existing rates for an additional 18 months in light of the economic downturn.*

The Commission must use its emergency power to apply such regulations to both interstate and intrastate calls. When Congress granted authority to the Commission to act in emergencies in the Communications Act of 1934, it did not distinguish between intrastate and interstate calls. For this same reason, the D.C. Circuit’s decision in *GTL v. FCC* does not bar this action. In that case, the court was interpreting the Commission’s statutory authority during normal conditions, not during an emergency.^{xxv} For that reason, the court applied a presumption against the Commission’s assertion of authority over intrastate calls because Congress had not spoken on the issue of whether the Commission could regulate the areas of intrastate calls.^{xxvi} Here, the Commission is presented with a clear Congressional mandate in the 1934 Act, which commands the Commission to regulate communications *to protect American lives*. That is what the Commission must do here.

III. The Commission should use its emergency waiver and rulemaking authority to require that correctional telecom corporations provide call service at cost during the COVID-19 pandemic, and that they submit biweekly reports of their revenue and cost of service to monitor compliance.

The Commission should use the same emergency waiver and rulemaking authority previously discussed to require that correctional telecom corporations offer call services at cost during the COVID-19 pandemic. Cost of service should include only costs directly connected to the provision of calling service; site commissions must not be permitted as a cost to the provider in the calculation. The Commission should also require that these corporations submit and publicly

publish biweekly reports of their revenue and cost of service to allow the Commission and the public to monitor compliance.

As established by the Commission in its 2015 Order, correctional telecom corporations have artificially inflated the price of calls for decades. There is absolutely no room for these predatory practices during a global health crisis that, above all else, demands more telecommunication services. As people and businesses at all rungs of American society suffer and sacrifice, these well-situated corporations can, at the very least, provide service while foregoing some percentage of the outrageous profit margins to which they have become accustomed.

Unfortunately, the Commission and the American people cannot trust these corporations to comply. To that end, the Commission should also use its emergency rulemaking powers to require that correctional telecom corporations submit and publish biweekly reports on their rates, revenues, and true cost of service during the period of cost-only rates. If, through the information collected in these reports, the Commission discovers that corporations have charged inflated prices for calls during the pandemic, then it should begin an enforcement action against them or refer them to the Department of Justice.

Furthermore, the Commission must ensure the unredacted reports are made publicly available because correctional telecom corporations repeatedly flout the Commission's existing annual reporting regulations. As we have discussed in previous comments,^{xxvii} the public relies on the annual reports as the only centralized collection of information about pricing trends in the correctional telecom industry. However, these corporations aggressively label key information as confidential,^{xxviii} even as they publish it on their own websites. These redactions—filed under penalty of perjury—flagrantly violate the Commission's own regulations. Any individual or corporation that tries to use a national crisis for financial gain must answer to the American people, and thus required reports during this time must be unredacted and publicly available.

The COVID-19 outbreak is a crisis of unprecedented proportions, and families need immediate action to stay connected. The Commission should use its influence to oblige correctional telecom corporations to sign on to Chairman Pai's Keep Americans Connected Pledge by voluntarily making calls free for the next 60 days. Meanwhile, the Commission should use its authority to protect incarcerated people and their families from exploitation and make calls free itself, so that it may issue a rule if providers do not respond in a timely manner. If the Commission declines to exercise its clear authority to make calls free, however, it should at the very least mandate that correctional telecom corporations offer service at cost and consistently monitor them to prevent price gouging.

Thank you for your concern and attention. Please feel free to contact me with any questions.

Sincerely,



Bianca Tylek
Executive Director

cc (via email only):

Chairman Ajit Pai
Commissioner Michael O'Rielly
Commissioner Jessica Rosenworcel
Commissioner Brendan Carr
Commissioner Geoffrey Starks

ⁱ Press Release, FCC, Chairman Pai Launches the Keep Americans Connected Pledge, (March 13, 2020), available at <https://docs.fcc.gov/public/attachments/DOC-363033A1.pdf>.

ⁱⁱ Press Release, FCC, Chairman Pai Launches the Keep Americans Connected Pledge, (March 13, 2020), available at <https://docs.fcc.gov/public/attachments/DOC-363033A1.pdf>.

ⁱⁱⁱ 47 U.S.C. § 201 (2018); *New England Pub. Commc'ns Council, Inc. v. FCC*, 334 F.3d 69, 75 (D.C. Cir. 2003).

^{iv} 47 U.S.C. § 276(d) (2018).

^v 47 U.S.C. § 151 (2018).

^{vi} See, e.g., Press Release, FCC, War Production Board Allows FCC to Act on Some Applications for New or Expanded Radio Service, WPB-4877 (Jan. 26, 1944), available at <https://www.fcc.gov/document/war-production-board-allows-fcc-act-radio-broadcast-applications>.

^{vii} 47 C.F.R. § 1.3.

^{viii} *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

^{ix} *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

^x *Northeast Cellular*, 897 F.2d at 1166.

^{xi} FCC, *Coronavirus*, April 3, 2020, available at <https://www.fcc.gov/coronavirus>.

^{xii} See, e.g., Press Release, FCC, FCC Gives Video Relay Service Providers Flexibility to Hire Additional ASL Interpreters During Pandemic, (April 3, 2020), available at <https://docs.fcc.gov/public/attachments/DOC-363518A1.pdf>.

^{xiii} 5 U.S.C. § 553(b) (2018); Cole, Jared. "The Good Cause Exception to Notice and Comment Rulemaking: Judicial Review of Agency Action," Congressional Research Service, (Jan. 29, 2016), available at <https://fas.org/spp/crs/misc/R44356.pdf>.

^{xiv} FCC, *In the Matter of Federal-State Joint Board on Universal Service*, FCC 05-178 (Oct. 14, 2005), available at <https://docs.fcc.gov/public/attachments/FCC-05-178A1.pdf>.

^{xv} Press Release, Pres. Donald J. Trump Will Not Tolerate the Price Gouging and Hoarding of Critical Supplies needed to Combat the Coronavirus, (March 23, 2020), available at <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-will-not-tolerate-price-gouging-hoarding-critical-supplies-needed-combat-coronavirus/>.

^{xvi} Saneta de Vuono-Powell et al., *Who Pays? The True Cost of Incarceration on Families* (Sept. 2015). <http://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf>

^{xvii} See FCC, *Rates for Interstate Inmate Calling Services, Second Report and Order and Third Further Notice of Proposed Rulemaking*, 30 FCC Rcd 12763 (2015).

^{xviii} *Global Tel*Link v. FCC*, 866 F.3d 397 (D.C. Cir. 2017) (“GTL”).

^{xix} Wagner, Peter & Alexi Jones. “State of Phone Justice.” Prison Policy Initiative. (Feb. 2019).

https://www.prisonpolicy.org/phones/state_of_phone_justice.html.

^{xx} Securus, Written Ex Parte Communication, April 2, 2020, available at

[https://ecfsapi.fcc.gov/file/1040250812241/Securus%20Response%20to%20Worth%20Rises%20Letter%20\(4-2-2020\).pdf](https://ecfsapi.fcc.gov/file/1040250812241/Securus%20Response%20to%20Worth%20Rises%20Letter%20(4-2-2020).pdf).

^{xxi} Wagner, Peter & Alexi Jones. “State of Phone Justice.” Prison Policy Initiative. (Feb. 2019).

https://www.prisonpolicy.org/phones/state_of_phone_justice.html.

^{xxii} 5 U.S.C. § 553(b) (2018); Cole, Jared. “The Good Cause Exception to Notice and Comment Rulemaking: Judicial Review of Agency Action,” Congressional Research Service, (Jan. 29, 2016), available at

<https://fas.org/sgp/crs/misc/R44356.pdf>.

^{xxiii} *See, e.g., Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

^{xxiv} *Id.*

^{xxv} *See GTL* at 402.

^{xxvi} *Id.* (citations omitted).

^{xxvii} *See* Worth Rises, Comment for Paperwork Reduction Act, Nov. 25, 2019, available at

[https://ecfsapi.fcc.gov/file/1126425000199/Worth%20Rises%20-%20Public%20Comment%20\(12-375\).pdf](https://ecfsapi.fcc.gov/file/1126425000199/Worth%20Rises%20-%20Public%20Comment%20(12-375).pdf).

^{xxviii} Global Tel Link, Global Tel Link Corporation Annual Report and Certification,” (April 1, 2019).

[https://ecfsapi.fcc.gov/file/104010462420615/REDACTED%20-%20GTL%20annual%20report%20and%20certification%20\(4-1-19\).pdf](https://ecfsapi.fcc.gov/file/104010462420615/REDACTED%20-%20GTL%20annual%20report%20and%20certification%20(4-1-19).pdf).